

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-492-MA of 2012 (O&M)

Date of decision: 02.11.2015

Suresh

...Applicant

Versus

Narender Gautam

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. J.S. Hooda, Advocate for the applicant.

Jitendra Chauhan, J. (Oral)

By filing the present petition, under Section 378(4) of the Code of Criminal Procedure (for short 'Cr.P.C.'), the applicant has assailed the judgment dated 04.01.2012, passed by the Judicial Magistrate 1st Class, Palwal, dismissing the complaint and acquitting the accused therein of the charges framed against him under Section 138 of Negotiable Instruments Act (for short 'the Act').

It is contended that the learned trial Court dismissed the complaint without appreciating the fact that respondent had duly admitted that the cheque bearing No. 854240 dated 21.01.2006 of Rs. 75,000/- was issued by him towards discharge of his liability which was dishonoured with the remarks 'funds insufficient'. Thereafter, the applicant had served a registered notice upon the respondent/accused

on 26.04.2006, however, the respondent did not make the payment deliberately but the trial Court erred in not taking into consideration the above facts.

Heard.

The learned Judicial Magistrate has recorded that a lot of doubt exists in the mind of the Court regarding existence of actual transaction between the parties and regarding the genuineness of the claim of the applicant, since the applicant has taken up altogether different stands in his cross examination from the stand taken by him in his complaint and examination in chief. The applicant had admitted in his cross examination that he had withdrawn the amount from his account in State Bank of Patiala. As per the applicant, the said amount was given in the presence of one Kishan. However, neither the said Kishan was produced as a witness to prove the complaint nor any receipt or statement of account was produced before the trial Court.

Even, otherwise, there is nothing on record to show that the applicant had advanced the amount in question to the respondent. Neither any receipt nor any authenticated document has been placed on record to substantiate his claim. There is no document on record to show the legal liability of the respondent towards the applicant. The allegations of the applicant appears to be vague.

In the circumstances, the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the material

on record. In fact there is no infirmity in the reasoning assigned by the trial Court for acquitting the accused/respondent. It is a settled law as has been held in C. Antony Vs. K.G. Raghavan Nair, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

Accordingly, the leave to appeal stands declined.

Dismissed.

02.11.2015

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(JITENDRA CHAUHAN)
JUDGE